

QUID NOVI

Journal des étudiant-e-s
en droit de l'université McGill

McGill Law's
Weekly Student Newspaper

Volume 34, n°11
29 janvier 2013 | January 29th 2013

QUID NOVI

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3661 Peel Street
Montréal, Québec H2A 1X1

<http://quid.mcgill.ca/>

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*Journal des étudiant-e-s
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WANT TO TALK? TU VEUX T'EXPRIMER?

Envoyez vos commentaires ou articles avant
jeudi 17h à l'adresse : quid.law@mcgill.ca

Toute contribution doit indiquer le nom de
l'auteur, son année d'étude ainsi qu'un titre
pour l'article. L'article ne sera publié qu'à la
discrétion du comité de rédaction, qui

basera sa décision sur la politique de
rédaction.

Contributions should preferably be submitted as
a .doc attachment (and not, for instance, a
".docx").



AARON
FERGIE

"LAW AND EVERYDAY LIFE"*

This editorial is consecrated to a reflection upon the utility of legal knowledge in everyday life. To elaborate: as a law student, when confronted with a relational problem in "everyday life" I have found that more and more reflexively I turn to the law for guidance. The problem confronting me this week was an anonymous complaint by one of the divided co-owners in my condo concerning my playing of percussion music (which, I might add, is a great way to loosen up the shoulders after a long law day). The complaint was a request to effectively cease playing at all times of the day, every day of the week. So, having already embarked upon the mysterious journey of "voisinage" and "abus de droit" in civil law property, I thought the time ripe to inform myself about my legal obligations in this situation.

Mes résultats sont les suivants :

Premièrement, bien que le droit puisse être utile pour nous informer des limites légales de nos actions, il faut s'interroger sur son utilité dans une situation de "everyday life" puisqu'il est plutôt un outil dur pour les situations extrêmes.

Deuxièmement, une chose intéressante avec l'abus de droit est que, même si nous semblons juridiquement justifiés à faire quelque chose, le fait même de ne pas essayer de concilier nos activités avec celles des autres (hors du contexte juridique) pourrait signaler aux cours que nous avons utilisé nos droits d'une manière excessive ou déraisonnable. Le droit nous pousse à ne pas trop compter sur le droit.

Thirdly, the law can act as a good guide for prudential reasoning: by reading through the facts of nuisance cases, we can get a pretty good idea of how *not* to go about solving problems with our neighbours. Many of these situations quickly become escalatory conflict spirals.

The sound of traditional Korean drums through the walls, or the sight of an unsigned letter, put a wall between us and the human faces on the other side. Perhaps we resort to these mechanisms because we are afraid. Even symbolically, I discovered that neighbours frequently erect excessively high walls that not only kill roses by blocking the sun, but sometimes display conquerors flags. But although the walls are an attempt to solve the problem, they tend to do the opposite.

Inspiré par ces résultats, j'ai décidé de fermer mes livres de droit et d'ouvrir les portes. J'ai parlé avec quelques-uns de mes voisins (il en reste encore quelques-uns) et j'ai essayé simplement de voir leurs besoins. Et le monstre n'est jamais si large dans la lumière : leurs vraies demandes étaient modestes et la source des plaintes était plutôt d'autres problèmes persistants qui n'ont rien à voir avec moi.

In sum, although the law is a powerful tool that can force a solution, it also has the potential to act as a wall of formal procedure that can hide the human faces on the other side. Perhaps that's why "abus de droit" forces us to take steps to conciliate. A wise person once said, "Never open a law book when you can pick up a phone book and make a simple call instead."

*The title is taken from: Daniel Jutras, « The Legal Dimensions of Everyday Life », (2001) 20 Canadian Journal of Law & Society 45.

JESSICA
MAGONET

LAW SCHOOL: KEEPING IT WACKY

You don't need to know why you are here.

I don't really know why I am.

Many of you picked law school with a grand plan in mind, clear career goals and the will to achieve them.

But some of us fell into law school, like Alice down the rabbit hole. We picked the red pill.

And that's ok too. As long as we are enjoying the ride.

My experience at New Chancellor Day Hall hasn't always been enjoyable. Some days I raged as I read the civil code, asking myself why, of all the magnificent books in the world, I had chosen to spend my time studying this dry, red brick.

But I have had classes here that have sparked something deep inside me. Ideas that caught me off guard. Moments of wonder.

(Sorry for the nerdiness.)

Law school isn't a contract, it's a relationship. If you are willing to invest time into the relationship, you can really make it your own. We are given (a degree of) latitude here to learn what we want to. So take advantage of it!

My experience at law school certainly hasn't been perfect. Yet I suspect it has been a bit atypical.

I want to tell you about it, not because I think it is the ideal experience, one that everyone should mimic. I want to tell you about it to encourage you to think seriously about the time you are spending here. I want to inspire you to do what you can to make this place inspire you.

I want to show you that you can do things differently.

Here is a list of unexpected things I have done as a McGill law student:

- I wrote my final exam for Advanced Common Law Obligations about imagination;
- I took a class on law and art history;
- I am taking an elective in the Philosophy of Geometry, and for those of you who think this has no relationship to law check out Leibniz and Hobbes; I didn't see that one coming;
- I wrote a paper about Edward Burtynsky's photography, biophilia, aesthetics and wilderness law;
- I'm taking a class where the only text is *The Leviathan*;
- I joined a journal that publishes articles in a field that really interests me;
- I was working for a law professor;
- I spent a fair bit of my summer thinking about South African literature and Truth and Reconciliation Commissions.

No one is forcing you to do the courses aux stages and to take courses that will train you for a bar exam. These are all choices we get to make, and they can be fine choices as well! But if they aren't the right choices for you, if their instrumental purpose or immediate benefit isn't that compelling, don't make them!

I don't know if my time here will prepare me to be a kick-ass litigator. It might not help me to save the United Nations. And it may not arm me with the tools to help the city's most vulnerable navigate the legal system. But it has often been exactly what I was looking for: an exciting intellectual adventure!

DARE to spend your time here getting, not just a *degree*, but an *education*.

"SUZY
SEATMATE"

"CLASS ROULETTE"

What you do on your screen is your business. Yes, it may be distracting to others. But we're all guilty of it.

However, a Skype video chat crosses a line. There is no need, just wait for the end of class.

And let's face it, if you're skypeing with a dude, and he's only visible from the chest up, he looks like he's masturbating.

Thank you.

Voir mon avenir en droit de cinq façons

Être un acteur de l'évolution du droit
Œuvrer en relations internationales
Repousser les frontières du droit
Comprendre et bâtir le réseau de la santé
Contribuer à la transformation de la justice

USherbrooke.ca/droit



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- Formation de pointe en droit transnational : un domaine en plein essor
- *Juris Doctor* en deux étés consécutifs (aucun retard pour accéder au Barreau)
- Programme de maîtrise également offert
- Formation donnée à Sherbrooke (temps plein)

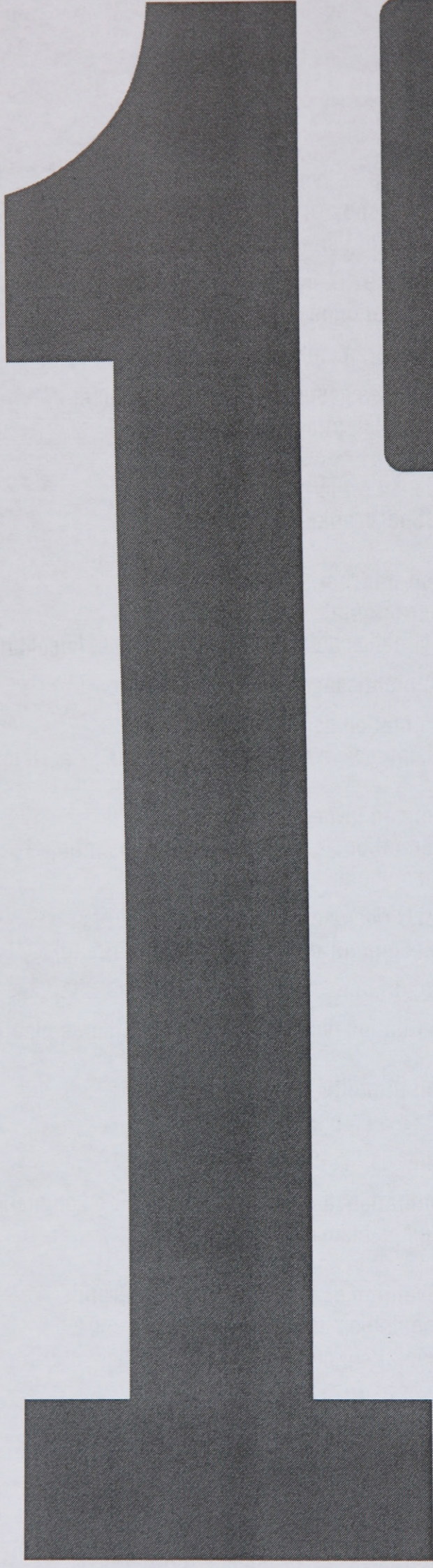
Droit et politiques de la santé

- Stages en milieu professionnel
- Chef de file dans le domaine
- Formation donnée à Sherbrooke et à Longueuil (temps plein et temps partiel)

Prévention et règlement des différends

- Acquisition de compétences d'avenir : médiation, négociation, conciliation et arbitrage
- Chef de file dans le domaine
- Formation donnée à Longueuil (temps plein et temps partiel)

Autres programmes offerts : environnement, médiation interculturelle et lutte à la criminalité financière.



**We
Couldn't
Have
Said It
Better
Ourselves**

"Blakes is undoubtedly one of Canada's leaders, achieving top rankings in many of the key areas."

National Post, March 15, 2012 (comment from Chambers and Partners on Blakes winning Canada's Law Firm of the Year Award)

"The strong performance of so many lawyers from Blake Cassels & Graydon LLP underlines the depth of expertise the firm can offer across a range of areas."

Who's Who Legal Awards 2012 (on Blakes winning the Canada Law Firm of the Year Award)

"Blakes leads legal firms for Canadian merger advice"

The Globe and Mail, January 5, 2012

"[Blakes has] significant bench strength for whatever we need." "They belong in the top tier."

IFLR1000: The Guide to the World's Leading Financial Law Firms – 2012 Edition

"There are very few firms with this kind of strength."

Chambers Global: The World's Leading Lawyers for Business 2012

Blakes
LAWYERS

TLC FROM THE MLJ

On Monday, January 21st, *McGill Law Journal* members treated 1Ls to some baked goods and motivation cards! Yes, 1L can be hard. We hear you. Don't give up yet!

Afin de vous soutenir moralement, nous vous avons demandé d'écrire vos vœux ou objectifs pour l'année.

Here are a few 1L goals and wishes.

1Ls plan to...

Get an awesome RA job this summer!
Lâcher prise.
Sleep!
Get a B in Kong's class.
Keep on with friends and family.
Avoir un stage et des bonnes notes.
Passer moins de temps sur la forme que sur le contenu.
To live a balanced life full of joy and purpose.
Get in the top 10%
Get straight As.
Figure out what they want to do after Law School!
Be back here in September.
"Goal: to remain whole, keep my sense of humour, know that law is rich and goes well beyond law school and to share my successes and failures."
Moot and present to audiences with flair, precision and confidence.
Be a better person.
Join the MLJ editorial board!
Achieve success and nothing less.

1Ls wish for...

"I wish for sunshine"
"I wish I get 6 As in my finals" :)
"I wish for enough success to keep me going, and enough failure that I learn something useful before I die."
"I wish for this year to be fantastic!"

"Health and happiness for all students!"
"I wish to be in Paris this summer!"
"Happy home!"
"I wish I get a 3-month internship in Sydney, Australia."
"I wish to be happy and healthy and surround myself with positive people."
"That the Jews and the Palestinians make peace." [ed: we wish for this too!]

Did you know that people who write down their goals are 10 times more likely to achieve them? Here are some tips to help you better write your objectives and get a step closer to reaching them.

Astuces pour rédiger des objectifs réalisables

- **Break it down!** Break down your big goal into multiple smaller goals.

☒ "Je termine ma recherche pour ma dissertation d'ici le 30 janvier 2013. I finish reading the research material by February 28, 2013. Je termine mon ébauche d'ici le 1er mars. J'écris 3 pages chaque jour pendant la semaine de relâche. I send my draft paper to peers for feedback by March 10th...."
☒ "I write my term paper."

- Écrivez votre objectif **au présent**, comme s'il était réalisé.

Par exemple :

☒ Je lis toutes mes lectures et relis mes notes avant chaque cours.
☒ Je relis mes notes de cours chaque samedi matin.
☒ I breathe in deeply and I remain calm throughout my exams.

Questions à garder en tête:

- Votre objectif est-il **quantifiable**? Si vous ne pouvez pas le mesurer, ce n'est pas un objectif assez clair.

☒ "Je lis le chapitre 4 du recueil de cours de droit pénal."

☒ "Je fait du droit pénal."

- Are you using affirmative language for your goal? Are you indicating what you want rather than what you don't want? Positive language is more powerful than negative language.

☒ "I get things done on time."

☒ "I stop procrastinating."

- Votre objectif est-il **spécifique**?

☒ "J'écris le paragraphe d'introduction du factum entre 18h et 20h ce soir."

☒ "I work on my factum."

- By when? Do your goals have a **time-line**?

☒ "J'édite les notes de bas de page de ma dissertation ce soir, après mon dernier cours jusqu'à 20h, et les vérifie une dernière fois demain matin, entre 10h et midi."

☒ "I do my footnotes."

Bonne chance à tous!

Osler, Hoskin & Harcourt S.E.N.C.R.L./s.r.l.

Vous vous attendez à d'excellents mentors,
ce sont les sourires qui vous épateront.



OSLER Droit au but

Bien sûr, nous tenons nos étudiants occupés. Mais nous savons qu'un étudiant stimulé est un étudiant qui réussit. Chez Osler, vous trouverez une culture d'entreprise et un amour du travail qui sauront nourrir vos ambitions.

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COMITÉ DES
LANGUES
OFFICIELLES

TOWN HALL SUR LE BILINGUISME À LA FACULTÉ

Avez-vous des préoccupations quant au bilinguisme à la Faculté? Intrigued by McGill Law's amorphous bilingualism? Vous aimeriez discuter avec vos collègues de votre expérience ou de votre relation avec le bilinguisme de la Faculté?

Come to our Town Hall meeting on "Best Practices in McGill Law Bilingualism"! Au programme : débats, brainstorming, échanges courtois sur la question suivante : « Comment vivez-vous le bilinguisme à la Faculté de droit? »

Join your friends from the Official Languages Committee for an interactive discussion and some free pizza, Wednesday January 30th at 12:30 in room 101.

À très bientôt!

JONATHAN
BROSSEAU

Law II

RE RESPONSE TO "ONE L"

A REPLY TO MR. SHORTT

In 2013's first issue of the *Quid Novi*, Michael Shortt replied to an article of mine entitled "One L", which dealt with issues of legal pedagogy. Although I find Mr Shortt's Pub Doc summaries well-researched and well-written, I cannot, with all due respect, say so about his article. I was left wondering whether he and I had read the same article. I found that he was misled both on the state of legal pedagogy at McGill and on the thesis that I put forward.

THE SOCRATIC METHOD?

Firstly, I argued that "despite first-year law classes having officially dropped what has been known as the classical Socratic/Langdellian Method, this pedagogical instrument continues to play a

crucial role in the curriculum". I grounded this affirmation by citing the *Educating Lawyers: Preparation for the Profession of Law and The Language of Law School: Learning to "Think Like a Lawyer"*.

Mr. Shortt presented a very "classical" or "traditional" view of the Socratic Method. While I do not disagree with his description, it was a mistake to say that I believe McGill has adopted this view. I clearly specified it was abandoned by most law schools.

Despite this correction, my understanding of my colleague's reply suggests that he does not concur with me in regards to the presence of the modern version of the Langdellian Method at McGill. I based this affirmation from the following four ex-

cerpts from his article which I will, in turn, prove wrong.

Firstly, he wrote: "Questions at McGill are not central to professors' knowledge-transfer strategy". On the contrary, I think professors do raise questions on cases to pass on lawyer skills. In "Curricular Stress", Edward Rubin says: "the basic method of teaching in first-year law classes continues to be something that can be described as the Socratic Method, that is, an intensive interrogation (...) into the doctrinal logic of a legal case". To demonstrate how this would apply to McGill, one must simply look at the examples of professors who constantly asked us the facts of the case, the arguments of the majority, the critique of the dissent, etc. If Mr. Shortt pays attention to this

CONTINUED ON PAGE 11

INNOCENCE MCGILL PRÉSENTE SA CONFÉRENCE ANNUELLE

AVEC M. DAVID MILGAARD ET
M. PETER EDWARDS

L'ÉVÉNEMENT SE TIENDRA À LA FACULTÉ DE DROIT DE MCGILL

MARDI LE 12 FÉVRIER, 2013 DE 18H À 21H

PRÉSENTATIONS ET PÉRIODE DE QUESTIONS: 18H À 19H30 DANS LE MOOT COURT

RAFRAÎCHISSEMENTS: 19H30 À 21H DANS L'ATRIUM

LES PERSONNES INTÉRESSÉES DOIVENT CONFIRMER LEUR PRÉSENCE À
INNOCENCE.LAW@MAIL.MCGILL.CA AVANT 17H, VENDREDI LE 1ER FÉVRIER.

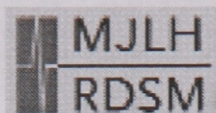
L'ÉVÉNEMENT SERA EN ANGLAIS

OUR SPEAKERS Innocence McGill

IN 1970, DAVID MILGAARD WAS SENTENCED TO LIFE IN PRISON BY A SASKATCHEWAN COURT FOR A MURDER HE DID NOT COMMIT. HE WAS FINALLY RELEASED IN 1992 AFTER SPENDING 22 YEARS BEHIND BARS. HE WILL BE SHARING HIS STORY.

PETER EDWARDS IS A JOURNALIST WITH THE TORONTO STAR WHO HAS COVERED MULTIPLE WRONGFUL CONVICTIONS THROUGHOUT HIS CAREER. HE IS THE CO-AUTHOR OF JOYCE MILGAARD'S MEMOIR *A MOTHER'S STORY: THE FIGHT TO FREE MY SON DAVID* AND THE AUTHOR OF *THE BANDIDO MASSACRE* AMONG OTHERS. HE WILL BE DISCUSSING WRONGFUL CONVICTIONS IN CANADA FROM A REPORTER'S PERSPECTIVE.

DANIEL
MASTINE &
ALEXANDRA
BORNAC



MJLH SCC TRIP

On the icy early (5:00am) morning of December 10th, 2012 the McGill Journal of Law and Health organized a group of eight faculty students to make the trek to Canada's Supreme Court. The trip was only made possible with generous funding from Dean's Discretionary Fund. A unique experience, students got the opportunity to hear firsthand the arguments brought forth in the potentially trailblazing Rasouli case on the question of decision making in terminating end of life care.



Pendant trois heures, deux avocats et six groupes d'intervenants ont débattu des différences entre "tuer" et "laisser mourir" ainsi que de la gravité de l'état végétatif de monsieur Rasouli. Ils ont également délibéré sur la question à savoir si les médecins pouvaient mettre fin aux soins de maintien de la vie sans le consentement de la famille du patient.

The Ontarian Consent and Capacity Board was created to mediate any differences which might arise between the decision-mak-

ing power of doctors conflicting with the wishes of family members. Unfortunately, the Board has been the subject of many criticisms, especially in the face of uncertain diagnostic testing.

Many questions remain to be answered in this particular area of health law. The seven sitting justices will have to craft a decision which balances Charter considerations for religious and personal rights, the efficiency of the health care system, the accuracy of medical testing and, to some extent, the scarcity of available medical resources.

Le grand nombre des intervenants montre que ce cas n'est pas unique et la décision aura des conséquences plus significatives pour le système de santé. Hasan Rasouli reste toujours dans un état végétatif pendant que sa famille et ses médecins attendent la conclusion de la Cour Suprême, décision qui amènera des changements et éclaircissements pour les soins en fin de vie.

Alternatively, the Court may only decide to address the constitutionality of Ontario Provision/Statute in question. Health law observers will have to wait roughly 4-6 months to see how the case turns out.

TIRAGE MINI-IPAD HEENAN BLAIKIE!

Courez la chance de gagner un mini-ipad gracieusement offert par Heenan Blaikie ! Il suffit simplement de remplir le questionnaire ci-dessous (version électronique ou papier - disponible au bureau de l'AÉD) et de le soumettre à Carole Gilbert, VP Relations Publiques avant le 30 janvier 2013 pour participer au tirage :) The winner will be announced at Heenan Blaikie's upcoming Coffeehouse on January 31st. This is an exciting opportunity not to be missed !!

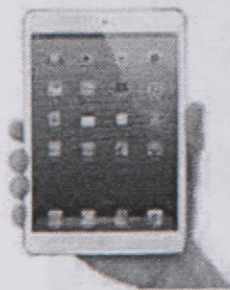
McGill University, Faculty of Law

Answer this questionnaire to enter a chance to win an IPAD-MINI during our upcoming Coffee House on January 31st 2013

Find the answers on our website:

www.heenanblaikie.com

NAME (block letters):



1. En quelle année Heenan a-t-il été fondé? Dans quelle ville?

2. Name three of the co-founders.

3. Combien il y a-t-il de bureaux au Canada? Dans quelles villes se trouvent-ils?

4. Name three prominent figures who are counsel to Heenan Blaikie

5. Qui préside le Comité des étudiants et stagiaires du bureau de Montréal?

phenomenon on a day-to-day basis, I am sure he will realize how this occurs systematically.

Secondly, he argues that "when questions are asked, they are posed to the class in general, not to specific individuals. Most tellingly of all, a refusal to answer questions carries no penalty." I do think professors or lecturers rarely ask a particular student to answer a question on the logic of a case, but the fact that participation in class is part of the final grade in some courses, *inter alia* both courses of advanced obligations, still gives a strong incentive to every student to raise his hand in class. And even if they do not, they are caught up anyway in the modern method of the progression of the class.

Thirdly, he states that professors are socialized out of the Socratic Method. Mr. Shortt cites the example of a practitioner who, after screaming at a class because students refuse to answer questions based on readings, was not rehired. I rather believe that these professors were socialized out of the use of physical violence. If this feature may have been intertwined with the Langdellian Method once, it was never central to its pedagogy. Instead, confronting student with the density of common law doctrine (a high volume of highly complex readings), the absence of context (no preparation before law school) and the painful character of the 1L experience are the fundamental characteristic of the method.

Finally, Mr Shortt concludes by saying that "McGill law is not a brutalizing environment." As suggested above, the roots of the Socratic Method are more alive than ever in the law school pedagogy. Indeed, McGill Law School curriculum is based on the assumption, like I wrote in "One L",

that "learning to think like a lawyer involves the painful reorientation that Socrates regarded as the essence of education". I do accept that qualifying this process of "brutalization" may be a little extreme. Maybe calling it "re-socialisation" may have resulted in less controversy. Nonetheless, the stress on the shoulder of a 1L, which tries to learn not only one, but two legal systems, directed my choice at the end of the day. I shall now tackle the argument on the purposive character of this brutalization.

PURPOSIVE BRUTALIZATION?

On the second issue raised in Michael Shortt's reply, I must again differ. He wrote: "Even if our professors could agree on the need to indoctrinate their students (already a ridiculous idea), it seems fairly clear that they could never agree on a single viewpoint to which all students should conform." I do not understand how my article came to be interpreted in such a way.

I asked at the beginning of my article the following question: "[Is 1L] carefully drafted to melt us in a single shape?" Even if I left it unresolved, he seems to have interpreted the answer as being the professor. However, I never said they were the source of this system.

I will seize this opportunity given to me to answer the question Mr. Shortt asked in the last issue of the *Quid Novi*: "just whose shape are we being moulded into?" I am under the impression that we are moulded into the shape of jurist by the jurists themselves. While a vague response, it is a result of an interesting reality that lawyers must be trained to "think like lawyers". Learning the law is also learning the values of the legal profession, which lie both in its culture, history and language.

Each profession requires the learning of new mores. However, few professions require such a profound brutalization, or socialisation if you prefer, like the legal profession. I am of the opinion that it sets us apart, it isolate us, from the rest of the society. And the consequence of this might, even if they are grounded in a rationale, have deep negative effects.

A WORD TO MR SHORTT

I know McGill Law is a unique legal educational institution. We are taught to be critical of the law. Had I been studying at another institution, I may never have written "One L". That being said, I believe this is an opportunity to reconceptualise our understanding of legal pedagogy in a more profound way going forward. We must understand how the Socratic Method treats us in order to determine how we want to treat it. That was the point of my article and both sections; the one on legal education and the one on internal motivation, were interconnected.

To conclude, my colleague wrote that "[he] was left wondering whether he and I were attending the same law school" and that "Mr Brosseau makes a critical point about the importance of inherent motivation". Thus, if he had read my article more carefully and reflected on it more deeply, he would have understood it is partially up to us to decide which law school we want to attend.

I made my choice.

For those who would like to join in the debate, whether professors or students, the floor is open! [Eds.]

OVERHEARD AT THE FAC?

This week there were not enough submissions to the overheards to create this section. We are currently considering ways to garner more participation, so please stay tuned!

Si vous voulez soumettre un overheard, s.v.p. envoyez un courriel à: quid.overheard@gmail.com

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nbc.ca/lawyersstudents



**NATIONAL
BANK**

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